



U.S. DEPARTMENT OF JUSTICE

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July 14, 2009

The Honorable Anthony W. Ishii  
Chief Judge  
United States District Court, Eastern District of California  
2500 Tulare Street  
Fresno, CA 93721

Re: **Cocaine Sentencing Policy**

Dear Chief Judge Ishii:

The United States Department of Justice recently provided guidance to federal prosecutors concerning sentencing for crack cocaine offenses. This guidance provides in part that United States Attorney's Offices should inform the courts that the Justice Department believes Congress and the United States Sentencing Commission should eliminate the disparity in sentencing between crack and powder cocaine, while noting that Congress has not yet determined whether or how to achieve a more appropriate sentencing scheme. Until Congress acts, the Department of Justice recognizes courts must exercise their discretion under existing law to fashion a sentence consistent with the objects of 18 U.S.C. § 3553(a).

The position of the United States Attorney's Office with respect to variance motions in crack cocaine cases on the basis of the crack/powder disparity will be determined on a case-by-case basis. Whether and to what extent an AUSA opposes such a motion will depend on the facts and circumstances of the particular case. This pertains to cases in which there has not yet been a plea agreement as well as to those pending sentence. In no event, of course, would there be an agreement to a sentence below any applicable statutory mandatory minimum.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Larry Brown".

LAWRENCE G. BROWN  
Acting United States Attorney

cc. All District Court judges  
All Magistrate judges  
Daniel Broderick, Federal Defender  
Jay Craddock, Chief Probation Officer